

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III  
CLERK

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600 CAMP STREET  
NEW ORLEANS, LA 70130

August 4, 2004

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or  
Rehearing En Banc

No. 04-10001 Mirant Corporation v. Potomac Elec Power  
c/w 04-10004 Mirant Corporation v. Potomac Elec Power  
c/w 04-10094 Mirant Corporation v. FERC  
USDC No. 4:03-CV-1242

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Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5<sup>TH</sup> CIR. RULES 35, 39, and 41 govern costs, rehearings, and mandates. **5<sup>TH</sup> CIR. RULES 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5<sup>TH</sup> CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5<sup>TH</sup> CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

The judgment entered provides that appellees (Potomac Elec Power) pay to appellants the costs on appeal.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By:   
Kristin Cowdell, Deputy Clerk

Enclosure  
Mr Wayne Cross

Ms Judith Elkin  
Ms Anne M Johnson  
Mr Thomas E Lauria  
Mr Luke A McGrath  
Ms Grace Delos Reyes  
Mr Robert A Milne  
Mr Daniel M Lewis  
Mr James Bradford Ramsay  
Mr Stephen L Tatum  
Mr Jack E Pace  
Mr J Christopher Shore  
Mr William Alan Wright  
Mr Sander L Esserman  
Mr Roger Frankel  
Mr Jonathan P Guy  
Mr Dennis Lane  
Mr Timothy A Ngau  
Ms Beth Guralnick Pacella  
Mr Jason S Brookner  
Mr Kendall Matthew Gray  
Mr Paul N Silverstein  
Mr Mark F Sundback  
Mr Kenneth L Wiseman  
Mr Andrew Dash  
Mr Leslie H Scharf  
Mr Howard L Siegel  
Mr Eric Jay Taube  
Mr Mark Curtis Taylor  
Mr Edward S Weisfelner

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